Rule 106. Remainder of or Related Writings or Recorded Statements.

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Comment to 2012 Amendment

The language of Rule 106 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Cases

106.010 When a party introduces a portion of a writing or recorded statement, the other party may require the introduction of any other portion or any other writing or recorded statement that in fairness ought to be considered with the portion admitted, which means a portion of a statement that is necessary to qualify, explain, or place in context the portion of the statement that is already admitted.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 45–47 (2006) (court held that, if defendant introduced those parts of codefendant's statement that implicated codefendant and tended to exculpate defendant, state could inquire on cross-examination about those portions of codefendant's statement that implicated defendant).

State v. Prasertphong, 210 Ariz. 496, 114 P.3d 828, ¶¶ 24–29 (2005) (defendant sought to introduce portion of codefendant's statement as statement against penal interest; court held state was then entitled to introduce those remaining portions of codefendant's statement that were necessary to keep jurors from being misled).

State v. Prasertphong, 206 Ariz. 70, 75 P.3d 675, ¶¶ 30–33 (2003) (defendant sought to admit portions of codefendant's statement that were self-incriminating; state agreed that self-incriminating portions of statement were admissible, but contended that entire statement must be admitted, which included portions wherein codefendant shifted some responsibility for crimes to defendant; court agreed with trial court that admitting only portions of statement offered by defendant would have been misleading, thus entire statement would have to be admitted), *vac'd,* 541 U.S. 1039 (2004).

State v. Soto-Fong, 187 Ariz. 186, 928 P.2d 610 (1996) (in September, person gave one statement to police describing what co-defendants told him in August, and this statement tended to exculpate defendant; in November, person gave another statement to police describing what co-defendants told him in August, and this statement tended to inculpate defendant; trial court properly ruled that, if defendant chose to introduce testimony about September statement, state could introduce testimony about November statement).

State v. Clark, 196 Ariz. 530, 2 P.3d 89, ¶ 42 (Ct. App. 1999) (defendant claimed trial court erred in admitting only portion of tape of defendant's conversation with officer; trial court heard entire tape during motion for new trial and concluded other portion of tape did not warrant new trial; further, other testimony duplicated what was on other portion of tape).

State v. Wooten, 193 Ariz. 357, 972 P.2d 993, ¶ 59 (Ct. App. 1998) (evidence presented was that all jail telephone conversations were recorded on master microcomputer tape, and then must be transferred to cassette tape; state presented excerpts of defendant's telephone calls; defendant claimed excerpted version of tapes precluded him from introducing his complete statements; court noted that defendant was able to place excerpted portions in context, and thus failure to play statements in entirety did not violate defendant's rights).

106.015 If the portion of the statement that the party wants admitted does not qualify, explain, or place in context the portion of the statement that is already admitted, the trial court should not admit the requested portion.

State v. Cruz, 218 Ariz. 149, 181 P.3d 196, ¶¶ 57–58 (2008) (as officer drew his gun, defendant said, "Just do it. . . . Just go ahead and kill me now. Kill me now. Just get it over with"; approximately 1 hour later as paramedic was taking defendant to hospital, defendant told paramedic that "Arturo Sandoval" had shot police officer; court held "Arturo Sandoval" statement did not qualify, explain, or place in context "just shoot me" statement, thus "Arturo Sandoval" statement was not admissible under rule of completeness).

State v. Huerstel, 206 Ariz. 93, 75 P.3d 698, ¶¶ 37–39 (2003) (defendant introduced statements from two inmates, who claimed codefendant told them he shot all three victims; trial court then allowed state to introduce codefendant's statement to police in which he claimed defendant shot all three victims; state claimed codefendant's statement to police was admissible under "rule of completeness"; court noted these were two separate conversations rather than separate parts of same conversation, thus "rule of completeness" did not apply).

106.020 Once a party introduces a portion of a statement and the adverse party wants to introduce excluded portions of the statement, the adverse party is not required to have the excluded portions admitted immediately, but may instead have them admitted at a later time.

State v. Dunlap, 187 Ariz. 441, 930 P.2d 518 (Ct. App. 1996) (on redirect examination, state attempted to rehabilitate witness by reading portions of letter he wrote, and on recross-examination, defendant sought to have remainder of letter admitted; court held trial court erred in ruling that request was untimely).

106.030 Once a party introduces a portion of a written or recorded statement, this rule requires the admission of the remaining portions of the statement that ought in fairness to be considered contemporaneously with it; the remainder of the statement need not itself be admissible, under the reasoning that a party who introduces a portion of the statement forfeits any evidentiary or constitutional protections for the remainder of the statement.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 45–47 (2006) (court held that, if defendant introduced those parts of codefendant's statement that implicated codefendant and tended to exculpate defendant, state could inquire on cross-examination about those portions of codefendant's statement that implicated defendant, and introduction of those other portions would not implicate confrontation clause).

State v. Prasertphong, 210 Ariz. 496, 114 P.3d 828, ¶¶ 10–29 (2005) (defendant sought to introduce portion of codefendant's statement as statement against penal interest; court held state was then entitled to introduce those remaining portions of codefendant's statement under Rule 106 that were necessary to keep jurors from being misled, and that by introducing portions of codefendant's statement, defendant forfeited Confrontation Clause protection for remaining

portions; court stated that "legal scholars have reasoned that admission under the rule of completeness should not depend upon whether the portion sought to be introduced to complete the statement necessarily complies with some other rule of evidence").

State v. Prasertphong, 206 Ariz. 70, 75 P.3d 675, ¶¶ 34–39 (2003) (defendant sought to introduce portion of codefendant's statement that were self-incriminating; state contended entire statement must be admitted, which included portions wherein codefendant shifted some responsibility for crimes to defendant; court agreed with trial court that admitting only portions of statement offered by defendant would have been misleading, thus entire statement would have to be admitted, but portion state wanted admitted would not be admissible if it violated Confrontation Clause; court held, however, that portion state wanted admitted sufficiently inculpated codefendant to make it admissible under Rule 804(b)(3), and fact that it was somewhat inculpatory of defendant did not make it any less inculpatory, reliable, or admissible), *vac'd,* 541 U.S. 1039 (2004).

State v. Hughes, 189 Ariz. 62, 938 P.2d 457 (1997) (issue was whether victim had rejected defendant, not whether a "serious" relationship existed between them, thus portions of letters defendant wanted admitted were irrelevant and not subject to admission under this rule). (**Note:** To the extent this opinion holds that the remainder of the letter must also be admissible, it appears no longer to be good law.)